

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

MAY 9 12 23 PM '06

FOO-0ALJ ROD

In the Matter of:

FLORIDA CABLE TELECOMMUNICATIONS
ASSOCIATION
V.
GULF POWER COMPANY

EB Docket No. 04-381

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I-N-D-E-X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Patricia Kravtin		1490	1527	
Michael Harrelson	1554	1566		

EXHIBITS

<u>EXHIBITS NO.</u>	<u>DESCRIPTION</u>	<u>MARK</u>	<u>RECD</u>
Gulf Power Exhibits			
73	Draft of report by Mr. Harrelson dated 3/24/2005		1546
74	Two-page memo from Mr. Joseph to Mr. Seiver 3/9/2005		1546
75	One-page document from Mr. Seiver to Mr. Harrelson 3/9/2005		1546
70-A	Testimony designations from Mr. Harrelson's deposition	1549	1550
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EXHIBITS

<u>EXHIBITS NO.</u>	<u>DESCRIPTION</u>	<u>MARK RECD</u>
76	E-mail to Mr. Harrelson from Mr. Seiver dated 2/4/2005	1610
77	Draft report by Mr. Harrelson dated 3/24/2005	1617
78	Comcast construction specs and installation manual	1674
79	Set of specs for CHELCO	1677
80	SEE telephone survey	1682
82	RUS Bulletin 1724E-153 dated 4/25/2001	1687
81	RUS specs dated 12/1998	1698
83	Hubbel Power Systems manufacturing specs	1705
85	JEA document	1705
86	E-mail of photographs	1725 1742
87	Photo of Pole at IHOP	1725 1742
88	E-mail from Mr. Cook to Mr. Harrelson dated 2/3/2006	1728

Complainants Exhibits

B	Mr. Harrelson's testimony	1565 1565
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Start Time: 9:01 a.m.

Lunch: 12:02 p.m. to 1:03 p.m.

End Time: 4:01 p.m.

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P-R-O-C-E-E-D-I-N-G-S

(9:03 a.m)

JUDGE SIPPEL: Ms. Kravtin, you're on the stand. And you're still under oath, ma'am.

THE WITNESS: Yes, sir.

JUDGE SIPPEL: Mr. Langley?

MR. LANGLEY: Your Honor, I believe Mr. Siever wanted to take care of a housekeeping matter first.

MR. SEIVER: I had suggested that, Your Honor, but it can wait until Ms. Kravtin is done.

JUDGE SIPPEL: Okay. Let's go.

CROSS EXAMINATION

BY MR. LANGLEY:

Q Ms. Kravtin, yesterday, we had talked a little bit about the concept of rivalrous property. Do you recall that?

A Yes.

Q And I was showing you a chart from a text flow. Do you remember that?

A Yes, I do.

Q I want you to tell me in your opinion as

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1 an economist, what is an example of a highly rivalrous
2 good?

3 JUDGE SIPPEL: Your reference to was your
4 Exhibit 71 for identification.

5 MR. LANGLEY: I was referencing that just
6 because I prefaced to the question. But my question
7 is really not directed to that exhibit.

8 JUDGE SIPPEL: Right. My comment is just
9 for the benefit of the record. Go ahead.

10 THE WITNESS: Well, for example, we talked
11 about the example of a pie yesterday. A piece of
12 food. One person eats it. It's not available for
13 another is one example.

14 BY MR. LANGLEY:

15 Q So a pie, in your opinion, is an example
16 of a highly rivalrous good?

17 A Food, generally.

18 Q Food, generally.

19 A Yes. The example on the chart was, you
20 know, the wheat, also.

21 Q Can you give me a non-food example of a
22 highly rivalrous good?

1 A Well, the other example, for example,
2 discussed in the APCo decision is land. You know,
3 deciding land is a rivalrous. Someone is occupying
4 that land, and it's not available for someone else.

5 Q What about a tangible object? Can you
6 give me an example of a tangible object, other than
7 food and other than land, that is highly rivalrous?

8 A I guess when you talk about tangible, I'm
9 not sure exactly what you're looking for.

10 Q Well for example, is a computer a highly
11 rivalrous good?

12 A No. That could be shared among multiple
13 users.

14 Q Is --

15 A Depending on how it's configured. Because
16 it could be networked to different locations and
17 different people could be using it simultaneously or
18 using the processing features of it simultaneously.

19 Q I think yesterday you had a conversation
20 with the court, and an elevator was discussed. Is an
21 elevator an example of a highly rivalrous good?

22 A I don't know if I'd characterize it as

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1 highly rivalrous, because it's going to depend on
2 because -- again, you have multiple occupants in that
3 elevator. I guess it's going to depend on how that
4 elevator is provisioned.

5 Q How large it is?

6 A Yes. How large it is and how it's
7 designed.

8 Q Would it also depend on how many people
9 are in the elevator?

10 A No. How many people would determine how
11 crowded it was or whether it was at full capacity.

12 Q So the rivalry of the good doesn't
13 necessarily depend on how crowded it is. A good can
14 be rivalrous without being crowded?

15 A That's correct.

16 Q And so an elevator --

17 A Rivalrous is referring to the condition
18 where in order to provide the good or service to one
19 person, it necessarily means someone else can't finish
20 it or enjoy it. It's not available. If one person
21 consumes it, it's not available for someone else to
22 consume it.

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1 Q And yesterday, we were talking about an
2 elevator that could hold 101 people. Do you remember
3 that?

4 A Yes.

5 Q That's a big elevator, isn't it?

6 A Yes.

7 Q And once it has 101 people in it, would
8 you consider it rivalrous?

9 A It could be. Now, there could be
10 conditions where that elevator, for whatever reason,
11 if there are weight limitations and there are per
12 person or per weight. So maybe you have an elevator
13 that is designed to carry more people of a certain
14 weight or fewer people of a larger weight. So
15 depending on, you know, what the operating conditions
16 of the elevator are.

17 I'm trying to say it's hard to discuss
18 these situations in the abstract. Because there may
19 be the conditions that violate safety codes. You
20 can't have so many people over 200 pounds or something
21 like that. So if people were adhering to the safety
22 codes and, instead, you kick the bigger people off,

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1 you could actually fit more of the smaller people.
2 You know, not being an expert of elevator codes. I
3 know there could be some terms that affect that.

4 Q You've raised a great point. I mean the
5 capacity of the elevator doesn't just depend on the
6 number of people, but also the size of the people.

7 A Correct.

8 Q And that's true even though the elevator
9 could be enlarged. Correct?

10 A Yes. But obviously it would be related to
11 the ability of the elevator to be enlarged. Maybe
12 there is some -- you know, the building owner put in
13 a site ceiling for no reason other than -- I don't
14 know -- he seemed to think maybe he needed that site
15 ceiling. And then, they realized they didn't. They
16 remove that ceiling, and all of a sudden, we can
17 accommodate taller folks into that elevator. So if
18 it's dynamic, you need to look at particular
19 conditions of supply.

20 Q Or maybe if there were hand rails that
21 went around three sides of the elevator that stuck out
22 from the walls, say, a foot. If you move those out,

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1 you might be able to put some more people in.

2 A That correct.

3 Q Now, let's talk about a highly non-
4 rivalrous good. Can you give me an example, in your
5 opinion as an economist, of a highly non-rivalrous
6 good?

7 A In the classic example, the one cited in
8 the textbook, was defense -- things provided by the
9 government that benefit general population providing
10 it, for one, doesn't exclude others from enjoying that
11 benefit.

12 Q Can you give me an example of another non-
13 rivalrous good? And I know you think poles are non-
14 rivalrous.

15 A I was going to say the perfect example
16 that I think and is described in the APCo decision are
17 poles because of the ability and the practice of the
18 utilities to perform the make-ready.

19 Q You understand I'm asking about other than
20 poles. I understand your opinion there. But besides
21 a national defense, can you give me an example -- in
22 your opinion as an economist -- of a highly non-

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1 rivalrous good?

2 A I'm thinking of other goods like parks,
3 open-air concert venues, other type spaces where,
4 again, for others to enjoy or consume that benefit,
5 others don't have to be excluded or it takes -- only
6 under certain, more limiting conditions would there be
7 exclusion.

8 Q Okay. Can give you me yet another example
9 of a highly non-rivalrous good?

10 A Well, those are the ones that come to mind
11 right now. I'm sure I could come up with many others,
12 but --

13 Q So the two --

14 A My testimony focused on looking at poles
15 and the conditions of poles. And certainly there are
16 other goods that would be similar.

17 Q But as an economist, the two examples that
18 you can come up with today other than poles of highly
19 non-rivalrous goods are parks and the national
20 defense. Correct?

21 A Yes.

22 Q And its your testimony that -- can we pull

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1 up Exhibit 42, Page 40?

2 A I think I also talked about open-air
3 concert spaces and, for another one, landing strips.
4 I mean I can come up with some more.

5 Q Ms. Kravtin, is it your testimony as an
6 economist that poles like the one on the screened
7 marked as Gulf Power Exhibit 42, Page 40 are more like
8 parks, open-air concerts, the national defense and
9 landing strips than an elevator or a food item?

10 MR. SEIVER: I object to his
11 characterization, Your Honor.

12 JUDGE SIPPEL: What's wrong with the
13 characterization?

14 MR. SEIVER: I don't think she ever said
15 that it's more like a national park. She said it's
16 rivalrous. And I think it's misleading to say it's
17 more like a national park.

18 JUDGE SIPPEL: Well, I'm sorry. He's
19 asking the question on cross-examination. He's not
20 making a statement. The witness can handle the
21 question, I think. I'll permit the question to stay.
22 Overrule the objection.

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1 THE WITNESS: In terms of the properties
2 that I'm describing of exclusion, yes. Now, in
3 answering your questions, I was trying to give
4 examples like Mr. Bernanke did in his textbook
5 example, you know, of things that, you know, would
6 meet those extreme conditions.

7 Clearly, there's a continuum in between as
8 we talked about yesterday. And that's when you have
9 to look at the facts of the particular provisioning
10 just in the case of the elevator or anything else.
11 Because there may be conditions under which that
12 elevator, under certain operating conditions, is
13 highly non-rivalrous. So you do have to look at those
14 operating conditions, and then, evaluate.

15 I mean, there are many, many goods and
16 services and facilities, whether it be an airport --
17 I named some of those in my testimony where I discuss
18 an airport or a parking lot -- many of those
19 infrastructures. Let's try to pick on things --
20 identify things very similar to a pole, which I do in
21 my testimony. In our discussion a minute ago, I was
22 trying to give you some theoretical extremes.

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1 I talk in my testimony about airports,
2 about parking lots. All of these are infrastructure
3 for which space, in many cases, can be made readily
4 available.

5 In deposition, I talked to you about the
6 example of Logan Airport, which is considered to be a
7 crowded facility. But when you start looking at the
8 facts of it, it's not at full capacity because it has
9 half a terminal empty at the Delta. Because Delta
10 won't permit AirTran to operate because it's a major
11 competitor. Delta won't allow MassPort to let AirTran
12 operate at its gates.

13 So under that condition, really, I would
14 say that airport, even though it's crowded, is non-
15 rivalrous because it could accommodate more airports -
16 more airplanes landing. And then, you wouldn't have
17 to turn away others if we could get that anti-
18 competitive clause out of Delta's leasing arrangement.
19 So those are the sorts of things I do talk about in my
20 testimony.

21 MR. LANGLEY: Or you could always build a
22 bigger airport.

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1 THE WITNESS: If you needed to, but it
2 would be prudent to look at how you could use the
3 existing infrastructure more efficiently and manage it
4 more efficiently, such as taking empty gates and
5 making them available. Or if there are places on the
6 tarmac that are suitable for airplanes to sit and load
7 passengers, which many airports do.

8 At Dulles, they take the satellite buses
9 out to the tarmac. So it would certainly be prudent
10 from an economic standpoint to look at how you would
11 use the existing infrastructure more efficiently and
12 manage it, then to start building extra capacity.
13 That would not be an economically favorable solution.
14 It wouldn't be efficient. It wouldn't be taking the
15 best advantage of resources.

16 BY MR. LANGLEY:

17 Q You had mentioned excludability. Is that
18 a factor in determining whether something is
19 rivalrous?

20 A Yes. I discussed that in my testimony,
21 that the whole underlying concept under rivalry is the
22 situation where there is exclusion from use of the

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1 infrastructure.

2 Q You understand that in certain
3 circumstances, a utility has a right to exclude
4 attachers from its poles, don't you?

5 A Yes. I understand that. But I don't
6 believe the legal situation of that requirement
7 affects the underlying economics.

8 Q Ms. Kravtin, would you please turn to Page
9 32 of your testimony? In the bottom paragraph on that
10 page, you testify, open quote, "The economic realities
11 of make-ready and full capacity --

12 A Can you give me a line number, please?

13 Q I'm sorry. Yes, ma'am. Line 18.

14 A On Page 32?

15 Q Yes, ma'am.

16 A Yes. I see it now.

17 Q Where it says, "The economic realities of
18 make-ready and full capacity cannot rationally co-
19 exist?"

20 A Yes.

21 Q Is it your belief, then, that in order for
22 full capacity to exist as an economic term that Gulf

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1 Power would need to cease performing make-ready?

2 A I think I'm saying the opposite. Because
3 I'm saying that it would be because make-ready is a
4 common part of how Gulf Power operates. Gulf Power
5 has been, by their own evidence, routinely performing
6 make-ready to accommodate its own uses and that of
7 others. It would have to have a policy of
8 artificially changing the way it provisions poles if
9 it is to satisfy or purport to satisfy full capacity.

10 In an economic sense, the capacity isn't
11 at full capacity or at peak conditions unless the
12 provider is performing efficiently producing that
13 service or good in the most efficient way. If there
14 are changes that can be made to the way that provider
15 is provisioning the service or running its operations,
16 then from an economic sense, you can't say that it's
17 really full, because there are these ordinary changes
18 that can be made that could make more productive use
19 of that infrastructure without actually altering the
20 fundamental condition of supply.

21 Q So if tomorrow Gulf Power issued an edict
22 saying, "No more make-ready," would we run into full

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1 capacity situations?

2 A Well, I think that Gulf would certainly be
3 in a position to make that claim. I don't think it
4 would be based on a true economic; it's based on an
5 artificial restriction of what can be done to that
6 resource. And then, even if you did make the claim
7 it's full capacity, you then have to show the lost
8 opportunity under APCo.

9 But as I discussed in my testimony, that
10 would, I think, be a very -- from an economic
11 standpoint -- a very undesirable outcome. That the
12 only way that Gulf can get to what it believes to be
13 a state of -- okay -- demonstrate, "Well, we can't
14 accommodate any other users if by artificially
15 restricting make-ready."

16 Now, I think there would be an issue with
17 being non-discriminatory, because that would mean you
18 would have to shut down make-ready not only for cable
19 operators or other potential catchers, but presumably
20 to be non-discriminatory, you have to not do make-
21 ready for your own uses.

22 Q You don't think Gulf Power has a right to

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1 change its pole configuration or put a taller pole in
2 for itself regardless of what they're willing to do
3 for others?

4 A I'm not giving an opinion as to what Gulf
5 Power has a right to do. I'm just saying from the
6 perspective of economics and public policy, it would
7 seem that would be discriminatory. And pursuant to
8 Section 224, as I read 224, it does indicate that. As
9 far as evaluating whether there's insufficient
10 capacity that it has to be determined on a non-
11 discriminatory basis. And I'm not rendering an
12 opinion as what your right, you know, what is to
13 refuse make-ready or not.

14 Q Who owns the poles that we're talking
15 about?

16 A As I indicated in my testimony, I
17 understand that Gulf Power owns the poles. That is
18 the source of Gulf Power's ability to exercise control
19 over the poles.

20 Q Ms. Kravtin, do you view an electric
21 utility like Gulf Power as a potential competitor to
22 the complainant cable operators?

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1 A Yes. Certainly Gulf Power and other
2 electric utilities can be potential competitors in the
3 provision of communications services.

4 Q They can have their own cable network or
5 their own telecommunications network, couldn't they?

6 A Yes.

7 Q Ms. Kravtin, we had talked some yesterday
8 about fair market value. And I had suggested that the
9 definition was what a willing buyer would pay a
10 willing seller. And you had added with neither under
11 a compulsion to buy or sell. Do you remember that?

12 A Yes, I did. And that was basically
13 consistent with what your expert, Mr. Spain, a
14 valuation expert, had identified that definition to
15 be.

16 Q You were in here for Mr. Spain's
17 testimony?

18 A Some of it. Not all of it.

19 Q In the transaction between the complainant
20 cable operators and Gulf Power, who's under
21 compulsion?

22 A Well, certainly in my testimony, I'm

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1 focusing on the cable operators and their compulsion,
2 because to buy -- because Gulf is, again, as owner --
3 is controlling the terms and conditions upon which
4 they attach.

5 Q Well, the cable operator has an option,
6 don't they?

7 A Well, we discussed that yesterday at
8 length. There are options. There are always options.
9 Whether those options are economically and practically
10 feasible is another question.

11 Q And if there's space on a pole, barring
12 engineering or safety circumstances, Gulf Power does
13 not have an option, does it?

14 A Well, I understand Gulf does have the
15 mandatory access provision. But that's not why these
16 particular cases are going on. It's going on because
17 Gulf is still in control of the terms and conditions
18 upon which that attachment can take place.

19 Q Ms. Kravtin --

20 A You, yourself, alluded to the fact --
21 well, Gulf has the right to refuse make-ready or not
22 do make-ready. And here, Gulf is proposing rates that

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1 are some ten times higher than the regulated rates.

2 Q You don't think that mandatory access is
3 why we're here today?

4 A Well, I really shouldn't speak as to why
5 Gulf Power requested this proceeding to be held. I
6 understand, based on my review of the documents, that
7 Gulf Power believes that the mandatory access
8 provision of the Telecommunications Act entitled it to
9 a higher rate than the regulated rate provides.
10 Notwithstanding the fact that the regulated rate has
11 been determined to be a just compensation rate.

12 Q You agree that we're talking about
13 mandatory access, though, don't you?

14 A I believe we're talking about many things
15 of which mandatory access is one. But primarily we're
16 looking at -- I believe the issues in this case is
17 whether Gulf's claims are justified in light of the
18 Alabama Power decision criteria of full capacity and
19 lost opportunity. Because those are the new issues
20 based on the hearing designation order.

21 The basis for which Gulf was able to
22 essentially retry the case before the commission a few

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1 years ago was because Gulf argued that it hadn't had
2 the opportunity to put in additional evidence pursuant
3 to the Alabama Power criteria of full capacity and
4 lost opportunity.

5 Q Ms. Kravtin, are the complainants in this
6 case, to your knowledge, attached to Gulf Power's
7 poles under their mandatory right of access?

8 A I think I would have to answer that no.
9 Because I think most of the attachments and agreements
10 with the cable companies were done on a voluntary
11 basis prior to the Telecommunications Act.

12 Q So it's your testimony as a representative
13 today of the complainants that at least some of their
14 attachments are not pursuant to mandatory access?

15 A Well, again, I'm approaching this as an
16 economist. If you're trying to make a legal
17 distinction as to attachments before the law and after
18 the law, I'm looking at it from a perspective of what
19 transpired. And it didn't seem to me that the change
20 in the Telecommunications Act that now required that
21 access to be mandatory had any practical or real
22 effect on the cable company's attachments to the

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